

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

<b>In the Matter of</b>	)	
	)	
<b>Recommendations of the Independent Panel Reviewing the Impact of Hurricane Katrina on Communications Networks</b>	)	<b>EB Docket No. 06-119</b>

**To the Commission:**

**Additional Written Comments of  
Nickolaus E. Leggett, N3NL and Donald J. Schellhardt, Esquire KI4PMG**

The following are additional formal comments, in FCC Docket 06-119, from Nickolaus E. Leggett, N3NL and Donald J. Schellhardt, Esq. KI4PMG, both of Virginia. We are both amateur radio operators who have participated in numerous other Federal Communications Commission rulemaking dockets.

On June 26, 2006, we submitted formal comments in this Docket and introduced ourselves. Those comments called for action by the full Commission on FCC Docket RM-10330, which concerns protective measures against Electromagnetic Pulse (EMP).

In this set of comments, we discuss the aspects and consequences of home owner association (HOA) and restrictive covenant prohibitions of all amateur radio antennas, as well as similar prohibitions by landlords, and the resulting consequences for amateur radio emergency communications services.

## **Historical Amateur Radio Use of Antennas**

From the first invention of radio through the 1950s and 1960s, amateur radio operators were free to install stations and antennas at their owner-occupied residences. They used these stations to develop their operating and technical skills, and to provide public service communications during emergencies.

This freedom to install antennas allowed young people to set up amateur radio stations. Because there is no maximum or minimum age for becoming a “ham”, even adolescents and elementary school students have been empowered to learn electronics, handle message traffic and deal with emergency communications in both field exercises and real world situations. In some cases, these experiences have led to lifelong participation in amateur radio and/or to lasting careers in broadcasting or other technological activities. It is no accident, for example, that a majority of American astronauts and Russian cosmonauts have also been licensed amateur radio operators.

## **The Current Antenna Situation**

In the current housing market, almost all new housing and much existing housing is governed by restrictive covenants (contract provisions) that clearly ban the outside installation of any amateur radio antenna, large or small. These prohibitions are often written into the housing contracts by the banking industry, which tends to believe (rightly or wrongly) that it can

enhance property values by controlling the aesthetic aspects of the new communities. The antenna prohibitions therefore do not result from a market-based negotiation between the buyer and the developer, but rather from a negotiation between the developer and the bank. The buyer is not typically privy to these negotiations at all, but must still accept the results because the arrangements are so uniform. That is: There are no competing developers in the area who offer freedom from these restrictions.

The antenna prohibitions are then enforced by HOAs or condominium management associations. Membership in such associations is typically mandatory, and penalties for violation of their regulations are typically severe.

In some cases, these arrangements are imposed on buyers by the law as well as the banks. To cite two prominent examples, both Fairfax County (Virginia) and the entire State of Colorado require virtually all new housing developments to be regulated by covenant-mandated HOAs. The theoretical justification is usually that this mandate assures that someone -- that is, the HOA -- will be legally responsible for maintenance and environmental quality after the developer has sold the last house and left. In practice, however, the regulations imposed by HOAs frequently go far beyond what is necessary for maintenance and environmental quality -- with the outright prohibition of all exterior amateur radio antennas, no matter how small and/or inconspicuous, constituting a classic case of HOA overreach.

It has been estimated that at least 40% of all American neighborhoods are now being overseen by covenant-mandated HOAs -- which have virtually all of the powers of a municipal government, but are not subject to the Constitutional standards (including the Bill of Rights) that would restrain an officially constituted municipal government.

To that 40% figure, the Commission should add the numerous neighborhoods in which landlords prohibit any use of amateur radio antennas by their tenants. Unlike HOAs, landlords are not a new force on the American landscape. However, their influence over amateur radio operations has been rising by default -- as more and more Americans find themselves forced into rented apartments by real dollar increases in the price of owner-occupied housing.

High prices for owner-occupied housing strike with the greatest fury against younger generations of Americans, who were born too late to benefit from the more affordable housing prices that their parents and grandparents could take for granted.

Between the new housing jurisdiction of most HOAs, and the need to stay in rented apartments for a longer period of time, younger Americans are much more likely to face antenna prohibitions. Yet these are the very generations which the Amateur Radio Service, and indeed the country as a whole, are counting upon to produce the volunteer emergency communicators of the future.

All in all, with restrictive covenants for owner-occupied housing and the dictates of landlords, a majority of the nation's total housing stock is probably "Off Limits" to any exterior amateur radio antenna, of any size or configuration.

The effect of the antenna prohibitions is to ban much amateur radio activity. This occurs because antennas mounted indoors are not particularly effective. Amateur radio operators living in this housing are limited to mobile or portable operation away from their residence. Since most people spend a lot of time at home, their opportunities for amateur radio operation, including emergency preparedness training, are very limited.

Even if the FCC decides to "suspend" antenna prohibitions during emergencies, the Commission should not expect that this "suspension" will summon many new amateur radio volunteers out of the woodwork once a crisis has begun.

It is not human nature to spend hundreds of dollars for amateur radio equipment, if not more, only to dust it off and put it to use once every decade when an emergency strikes. Nor is it human nature to invest time and energy in obtaining an amateur radio license, and then undergo the additional training and practice required to make and keep the license valuable for the community, if the skills cannot be practiced and enjoyed in the operator's own home.

For most people, such expectations are simply not realistic.

Once again:

We urge the Commission to think beyond -- *far* beyond -- the present moment alone. Even the currently licensed amateur radio operators need a place to practice their craft if the Commission wants them to be at their best in an emergency. As for finding the *new* licensed amateur radio operators to replace -- or, ideally, more than replace -- the current amateur radio operators, when the time comes, this task will be difficult if not impossible if more than half of America's neighborhoods remain closed to tomorrow's amateur radio operators.

As for thinking about the present moment, how about this thought:

*Who* is going to channel information in and out of the many neighborhoods that ban amateur radio antennas, if those neighborhoods are struck by disaster *today*?

### **An Antenna Compromise for Emergency Communications**

To facilitate emergency communications preparedness, we propose the following compromise on amateur radio antennas:

The Commission should act to override antenna prohibitions, to a limited extent, for those amateur radio operators who have certified their capabilities as emergency communicators. This override should be respectful of residential aesthetic considerations, as well as the property rights of home owners.

### **Qualified Amateur Radio Operators**

Amateur radio operators who meet *all* of the following conditions should be allowed to override antenna prohibitions, to a strictly limited extent:

1. A valid amateur radio license.

*And*

2. Successful completion of the first two levels of emergency communications courses offered by the ARRL (or equivalent courses).

*And*

3. Active membership in a recognized emergency communications organization, such as the ARES, RACES, or MARS organizations.

### **Possible Future Consideration of Technology Pioneers**

Since FCC Docket 06-119 is limited to the consideration of emergency communications alone, we are currently proposing antenna ban overrides only in the case of those hams who are also volunteer emergency communicators.

However, we believe a case can also be made for antenna ban overrides in the case of hams who are demonstrably engaged in:

- (A) Experimental work which is intended to advance radio technology;

*And/or*

- (B) Activities which are developing a personal capacity to “field repair” radios, and/or to build some form of radios from scratch, in the event of a war affecting U.S. soil and/or some other emergency that disrupts normal supply and maintenance services for a sustained period of time.

We reserve the right to offer this expansion of “override eligibility” when the

FCC issues a proposed rule on this subject.

### **Single-Family Homes and Town Houses**

Qualified Amateur Radio Operators owning and living in single-family homes, or in town houses, should be authorized to install an amateur radio antenna on top of their residence limited in height to 20 feet. Alternatively, they should have the option of installing a 20-foot high antenna in their back yard or patio. In addition, they should be authorized to install a 3-foot whip (or rod) antenna or a 3-foot diameter loop antenna within one foot of a wall or window of their residence.

Similar antenna privileges are needed for renters of single-family homes and town houses. In these situations, reasonable limits for deposits for potential damages and liability insurance should be required. These latter steps would protect the property rights of the owner.



## **Condominiums**

Qualified Amateur Radio Operators owning and living in condominiums should be allowed to install a 3-foot whip (or rod) antenna or a 3-foot diameter loop antenna within one foot of a wall or window of their condominium residence.

## **Rented Apartments**

Qualified Amateur Radio Operators living in rental apartments should be allowed to install a 3-foot whip (or rod) antenna or a 3-foot diameter loop antenna within one foot of a window of their rental apartment residence. The landlord must be barred from prohibiting this installation. However, the property rights of the landlord must be protected by allowing a damage deposit of \$100 to be paid by the amateur radio operator and liability insurance coverage of at least \$5000 to be paid by the amateur radio operator. Assisted living residences should be included in the same regulations.

## **Consequences of a Limited Override of Antenna Prohibitions**

Our proposed limited override of amateur radio antenna prohibitions would allow amateur radio operators to actively participate in self-training in radio communications and technology. In addition, amateurs would have residential communications stations ready for operation during natural disasters or terrorist attacks.

At the same time, the aesthetic impact of amateur radio antennas would be minimized protecting the rights of residents, homeowners, and homeowner associations to an attractive and high-value living environment.

**Recommended Action**

For the reasons set forth, we urge the FCC to adopt these recommendations.

**Respectfully Submitted,**

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